

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**

**DOCKET NO. 2020-1-E – ORDER NO. \_\_\_\_\_**

IN RE:	)
Annual Review of Base Rates for Fuel	) <b>ORDER APPROVING AND</b>
Costs of Duke Energy Progress, LLC	) <b>ADOPTING ADJUSTMENT IN</b>
_____	) <b>FUEL COST RECOVERY</b>
	) <b>FACTORS</b>
	)

**I. INTRODUCTION**

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the annual review of base rates for fuel costs of Duke Energy Progress, LLC (“DEP” or the “Company”). The procedure followed by the Commission is set forth in S.C. Code Ann. § 58-27-865 (2015), which provides for annual hearings to allow the Commission and all interested parties to review the prudence of the fuel purchasing practices and policies of an electrical utility and for the Commission to determine if any adjustment in a utility’s fuel cost recovery mechanism is necessary and reasonable. Additionally, and pursuant to S.C. Code Ann. § 58-39-140 (2015), the Commission must determine in this proceeding whether an increase or decrease should be granted in the fuel cost component designed to recover the incremental or avoided costs incurred by the Company to implement the Distributed Energy Resources Program (“DERP”) previously approved by the Commission.

**A. Notice and Intervention**

By letter dated December 10, 2019, the Clerk’s Office of the Commission instructed the Company to publish a Revised Notice of Hearing and Prefile Testimony Deadlines (the “Notice”) in newspapers of general circulation and provide Proof of Publication on or before March 23, 2020.

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The letter also instructed the Company to furnish the Notice to each affected customer and provide a certification to the Commission on or before March 23, 2020, that notification had been furnished. The Notice indicated the nature of the proceeding and advised all interested parties desiring participation in the scheduled proceeding of the manner and time in which to file appropriate pleadings.

In compliance with the Commission's instructions, DEP published the Notice in newspapers of general circulation and on January 16, 2020, filed with the Commission affidavits demonstrating that the Notice was duly published. DEP also furnished a copy of the Notice to the majority of its retail customers by bill insert, or electronically for those customers who agreed to receive the Notice electronically. Pursuant to Order No. 2020-139, the remainder of DEP's retail customers were provided with a copy of the Notice via separate mailing, along with a letter explaining that the bill insert was omitted from their bill. In accordance with the instructions set forth in the Clerk's Office letters and Order No. 2020-139, DEP filed with the Commission an affidavit certifying that a copy of the Notice was furnished to the Company's retail customers in South Carolina on or before March 2, 2020.

The South Carolina Office of Regulatory Staff ("ORS") is considered a party of record in all proceedings before the Commission pursuant to S.C. Code Ann. § 58-4-10, and timely petitions to intervene were filed by Nucor Steel – South Carolina ("Nucor") and the Southern Alliance for Clean Energy/South Carolina Coastal Conservation League ("SACE/CCL"). There was no

opposition to any of the Petitions to Intervene and the Commission issued Orders granting each Petition to Intervene.<sup>1</sup>

## **II. JURISDICTION OF THE COMMISSION**

In accordance with S.C. Code Ann. § 58-27-140 (1) (2015), the Commission may, upon petition, “...ascertain and fix just and reasonable standards, classifications, regulations, practices or service to be furnished, imposed, observed, and followed by any or all electrical utilities.” Further, S.C. Code Ann. § 58-27-865(B) (2015) states, in pertinent part, that “[u]pon conducting public hearings in accordance with law, the commission shall direct each company to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the commission to be appropriate for that period, adjusted for the over recovery or under-recovery from the preceding twelve-month period.”

Consistent with the requirements of S.C. Code Ann. § 58-27-865(B), the Commission convened an evidentiary hearing to determine the reasonableness of the Company’s proposed rates to recover fuel costs and whether acceptance of those proposed rates is just, fair and in the public interest.

## **III. DISCUSSION OF THE HEARING**

The public evidentiary hearing in this matter was held virtually on June 9, 2020, before this Commission with The Honorable Florence Belser presiding as Chairman. Representing the parties and appearing before the Commission in this Docket were Katie M. Brown, Esquire and Samuel J. Wellborn, Esquire for the Company; Robert R. Smith, II, Esquire and Michael K. Lavanga,

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<sup>1</sup> See Order No. 2020-246 granting the Petition to Intervene filed on behalf of Nucor; See Order No. 2020-301 granting the Petition to Intervene filed on behalf of SACE/CCL.

Esquire for Nucor; J. Blanding Holman, IV, Esquire, Katherine Nicole Lee, Esquire, and Kurt D. Ebersbach, Esquire for SACE/CCL; and Alexander W. Knowles, Esquire, Andrew M. Bateman, Esquire, and Christopher M. Huber, Esquire for ORS.

DEP, ORS, and SACE/CCL presented witnesses regarding the Company's base rates for fuel costs.

#### **A. DEP TESTIMONY**

The Company presented the direct testimony of Kelvin Houston, Kevin Henderson, Julie Turner, Dana Harrington, John Verderame, and Jason Martin, and the rebuttal testimony of James J. McClay, III. The pre-filed direct testimony of DEP witnesses Houston, Harrington and Martin, along with the amended pre-filed direct testimony of DEP witnesses Verderame, Houston and Turner were accepted into the record without objection. The rebuttal testimony of DEP witness McClay was accepted into the record subject to a motion to strike lodged by counsel for SACE/CCL. The Company witnesses' exhibits were marked as Hearing Exhibits 1 through 7 and were entered into the record of the case.<sup>2</sup>

Company witness Houston testified regarding DEP's nuclear fuel purchasing practices, provided costs for the March 1, 2019 through February 29, 2020 review period, and described changes for the July 1, 2020 through June 30, 2021 billing period.

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<sup>2</sup> Hearing Exhibit 1 consists of the Direct Testimony Exhibits 1 and 2 of DEP witness Houston; Hearing Exhibit 2 consists of the Direct Testimony Exhibits 1 and 2 of DEP witness Verderame; Hearing Exhibit 3 consists of the Rebuttal Testimony Exhibit 1 of DEP witness McClay; Hearing Exhibit 4 consists of the Direct Testimony Exhibits 1 and 2 of DEP witness Henderson; Hearing Exhibit 5 consists of the public version of Exhibit 3, as amended, to the Direct Testimony of DEP witness Henderson (the confidential version of this exhibit was kept under seal); Hearing Exhibit 6 consists of the Direct Testimony Exhibit 1 of DEP witness Martin; and Hearing Exhibit 7 consists of the Direct Testimony Exhibits 1 through 14 of DEP witness Harrington.

Company witness Verderame testified regarding DEP's fossil fuel purchasing practices and costs for the period March 1, 2019 through February 29, 2020 and described related changes forthcoming for the period July 1, 2020 through June 30, 2021.

Company witness Turner described DEP's generation portfolio and changes made since the prior year's filing, discussed the performance of DEP's fossil/hydro/solar facilities during the period of March 1, 2019 through February 29, 2020, provided information on significant outages that occurred during the review period, and discussed DEP's environmental compliance efforts.

Company witness Henderson discussed the performance of Brunswick, Harris, and Robinson Nuclear Stations for the period of March 1, 2019 through February 29, 2020.<sup>3</sup> Witness Henderson reported to the Commission that DEP achieved a net nuclear capacity factor, including reasonable outage time, of 101.97%, which is above the 92.5% set forth in S.C. Code Ann. § 58-27-865.

Company witness Martin testified regarding the DERP costs that are incorporated into the proposed fuel factors sponsored by Witness Harrington, the nature of the costs as well as any changes made to the DERP portfolio since the 2019 fuel proceeding, and the Company's calculation of the components of the value of Net Energy Metering Distributed Energy Resources. Witness Martin also sponsored the Company's revisions to the 2020 Renewable Net Metering Rider RNM tariff sheet, filed as Martin Exhibit 1.

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<sup>3</sup> Pursuant to the Company's request, Commission Order No. 2020-339 ordered that Exhibit 3 of DEP witness Henderson's testimony be treated as confidential. The Company filed an amended Exhibit 3 to witness Henderson's direct testimony on June 8, 2020, along with a request to treat the amended exhibit as confidential. The Commission granted confidential treatment of amended Exhibit 3 of DEP witness Henderson's testimony at the hearing in this matter on June 9, 2020.

Company witness Harrington testified regarding: 1) the Company's proposed fuel factors by customer class to become effective July 1, 2020 for DEP's South Carolina customers; 2) DEP's actual expenditures for fuel, capacity-related costs, and environmental costs incurred while providing energy service to South Carolina customers for the review period of March 1, 2019 through February 29, 2020; 3) costs incurred related to DERP, for the review period; and 4) DEP's projected fuel costs, capacity-related costs, environmental costs, and DERP costs for the estimated period of March 1, 2020 through June 30, 2020, and the billing period of July 1, 2020 through June 30, 2021. Company witness Harrington provided fourteen (14) exhibits to support her direct testimony.

Company witness Harrington discussed the Company's approved DERP, associated costs, and the DERP NEM Incentive. Witness Harrington testified that the Company seeks approval for DERP incremental costs amounting to a per-account monthly charge of \$1.00, \$3.69, and \$100.00 for South Carolina residential, commercial, and industrial customers, respectively, including gross receipts tax and regulatory fees. Company witness Harrington testified that the impact of the rates set forth in her direct testimony for an average residential customer using 1000 kWh per month is a decrease of \$4.11 or 3.5%. Witness Harrington testified that the approximate decreases anticipated in the average monthly bill of the remaining customer classes are as follows: 1.9% for General Service (non-demand) customers; 2.3% for General Service (demand) customers; and 0.5% for Lighting customers.

## **B. SACE/CCL TESTIMONY AND RESPONSIVE TESTIMONY**

SACE/CCL presented the pre-filed direct and surrebuttal testimony of Gregory Lander. SACE/CCL witness Lander's pre-filed direct testimony was accepted into the record without

objection. Exhibits 1, 2, 3, and 5, and the appendix to Mr. Lander’s direct testimony were entered into the record as composite Hearing Exhibit No. 8. Exhibit 4 to Mr. Lander’s direct testimony was entered into the record as Hearing Exhibit No. 9.<sup>4</sup> Mr. Lander’s pre-filed surrebuttal testimony was accepted into the record subject to a motion to strike lodged by counsel for the Company.

The only contested issues in this proceeding were presented by witness Lander. Mr. Lander testified regarding natural gas pipeline capacity contracting, costs, and the Company’s data reporting practices relating to capacity releases. In his direct testimony, Mr. Lander recommends that the Commission require the Company to prepare and provide a report to SACE/CCL that includes (1) each of the Company’s generating units, (2) each unit’s hourly electricity generation, (3) the type of each unit, (4) the type of fuel consumed by each unit, and (5) the quantity of fuel consumed by each unit on an hourly basis. Witness Lander did not propose any changes to the Company’s proposed fuel rates. His testimony focuses on DEP’s contracted pipeline capacity utilization; sufficiency of the Company’s existing capacity to reliably serve its generation needs; and the lack of monetization of “idle” capacity. Lander’s surrebuttal testimony also recommends that the Commission consider modifying the procedural schedule in future fuel proceedings to allow for additional time between the Company’s deadline for filing direct testimony and the deadline for ORS and intervenors to file direct testimony. In spite of these recommendations, Mr. Lander was able to conclude that—based upon his analysis—the Company had a “very good level” of long-term capacity utilization and a “good level” of overall capacity utilization.

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<sup>4</sup> Hearing Exhibit 9 consists of the public version of Exhibit 4 to the Direct Testimony of SACE/CCL witness Lander (the confidential version of this exhibit was kept under seal).

In rebuttal, Company witness McClay provided additional background on the Company's and Duke Energy Carolinas, LLC's ("DEC") management of natural gas supply and transportation capacity and responded to opinion testimony and recommendations offered by witness Lander on behalf of SACE/CCL.<sup>5</sup> In his rebuttal testimony, Company witness McClay notes that due to the limitations inherent to operational data estimates, Mr. Lander's load factor utilization analysis does not include all gas flows and burns from the review period and is therefore understated. Although the Company provided SACE/CCL with actual consumption data based on end of month settlement reconciliations, Mr. Lander did not use that data in his analysis. McClay also testified that DEP and DEC do not currently have sufficient firm capacity to serve their gas generation requirements, as they currently rely on a single source pipeline with an inadequate amount of firm transportation and increasing operational restrictions. McClay testified that the Companies do not have extra or "idle" capacity to monetize by releasing it to the market. Instead, DEP and DEC purposely maintain firm transportation throughout the gas day to address intraday needs, late-cycle storage adjustments, and post-cycle penalty mitigation, which in turn protects customers from pipeline imbalance penalties of \$50/dth. Witness McClay also testified that the Company provided SACE/CCL information consistent with the Commission's order in the 2019 DEC fuel case. Finally, Company witness McClay testified that the procedural schedule should not be adjusted, noting that SACE/CCL submitted its first data request to the Company on April 10, 2020, more than five weeks before SACE/CCL's testimony was due to be filed.

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<sup>5</sup> Pursuant to the Company's request, the Commission Order No. 2020-401 ordered that witness McClay's rebuttal testimony be treated as confidential.



### C. ORS TESTIMONY

Following the presentation of the Company's witnesses and SACE/CCL's witness, ORS presented the direct testimony of Anthony D. Briseno, Brandon S. Bickley, Anthony M. Sandonato, and Robert A. Lawyer. The pre-filed direct testimony of all ORS witnesses was accepted into the record without objection by the parties, and the ORS witnesses' exhibits were marked as composite Hearing Exhibits 10-13 and were entered into the record of the case.

ORS witness Briseno presented direct testimony and ten exhibits, which demonstrated the results of ORS's examination of DEP's books and records pertaining to the Fuel Adjustment Clause operation for the actual period of March 2019 through February 2020.<sup>6</sup> The estimated months of the review period, March 2020 through June 2020, were also reflected in witness Briseno's pre-filed testimony. In his pre-filed direct testimony, witness Briseno stated that based on ORS's examination, ORS agrees with the following cumulative (over)/under-recovery balances as calculated by the Company:

- February 2020 base fuel cost under-recovery balance of \$8,184,894;
- February 2020 environmental cost component over-recovery of \$86,728;
- February 2020 capacity cost component under-recovery balance of \$2,280,576;
- February 2020 DERP incremental under-recovery balance of \$45,020;
- February 2020 DERP avoided cost under-recovery balance of \$12,641;
- June 2020 estimated base fuel cost under-recovery balance of \$3,825,487;
- June 2020 estimated environmental cost component over-recovery balance of \$605,879;

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<sup>6</sup> Composite Hearing Exhibit No. 10 consists of the Direct Testimony Exhibits of Anthony D. Briseno (Exhibits ADB-1 through ADB-10).

- June 2020 estimated capacity cost component under-recovery balance of \$2,126,331;
- June 2020 estimated DERP incremental cost under-recovery balance of \$245,727;
- June 2020 estimated DERP avoided cost under-recovery balance of \$36,574.

ORS witness Bickley presented direct testimony and six exhibits.<sup>7</sup> Witness Bickley testified regarding ORS's examination of DEP's power plant operations used in the generation of electricity to meet the Company's retail customer requirements during the review period.

ORS witness Sandonato presented direct testimony and five exhibits.<sup>8</sup> Witness Sandonato testified regarding the Company's fuel expenses used in the generation of electricity to meet the Company's South Carolina retail customer requirements during the review period.

ORS witness Lawyer presented direct testimony and one exhibit.<sup>9</sup> Witness Lawyer testified regarding ORS's recommendation resulting from the examination of DEP's DERP expenses for the period of March 2019 through February 2020 ("Actual Period"), March 2020 through June 2020 ("Estimated Period"), and July 2020 through June 2021 ("Forecasted Period"). Specifically, witness Lawyer testified regarding the Company's DERP avoided and incremental costs, the method by which the Company proposed to recover those costs, and the value of the NEM incentive. Additionally, witness Lawyer addressed the Company's modification to the Renewable Net Metering Rider.

#### IV. PRELIMINARY MATTERS

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<sup>7</sup> Composite Hearing Exhibit No. 11 consists of the Direct Testimony Exhibits of Brandon S. Bickley (Exhibits BSB-1 through BSB-6).

<sup>8</sup> Composite Hearing Exhibit No. 12 consists of the Direct Testimony Exhibits of Anthony M. Sandonato (Exhibits AMS-1 through AMS-5).

<sup>9</sup> Hearing Exhibit No. 13 consists of the Direct Testimony Exhibit of Robert A. Lawyer (Exhibit RAL-1).

**A. DEP's Motion to Strike**

At the hearing, counsel for DEP moved to strike the following from SACE/CCL witness Gregory Lander's surrebuttal testimony as not responsive to testimony filed by the Company on rebuttal: (1) page 2, line 5 through line 19, which discusses the Company's utilization of short-term capacity; and (2) page 3, line 12 through page 4, line 13, which discusses a discovery issue.

South Carolina case law limits reply testimony, which includes surrebuttal testimony, to that which responds to matters already raised. *See State v. South*, 285 S.C. 529, 535, 331 S.E.2d 775, 779 (1985) ("Any arguably contradictory testimony is proper on reply . . ."). However, "reply testimony should be limited to rebuttal of matters raised by the defense." *State v. Huckabee*, 388 S.C. 232, 242, 694 S.E.2d 781, 786 (Ct. App. 2010); *see also State v. Farrow*, 332 S.C. 190, 194 (Ct. App. 1998) ("We thus hold the reply testimony . . . was improper because it was not presented to rebut evidence adduced by Farrow."); *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 130 S.E.2d 363 (1963) (finding reversible error where the lower court denied a motion to strike and permitting it to be left in the case "for what it is worth").

As for witness Lander's discussion of the Company's utilization of short-term capacity at page 2, line 5 through line 19 of his surrebuttal testimony, the Company states that this matter was not directly addressed in Company witness McClay's rebuttal testimony because it is not relevant to this fuel proceeding and because the Company relies upon short-term and long-term capacity in the aggregate.

Counsel for the Company also moved to strike witness Lander's surrebuttal testimony at page 3, line 12 through page 4, line 13 with respect to discovery matters. Mr. Lander asserts that the Company did not address his request made in direct testimony that plant names or designations

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be standardized to facilitate a comparison of electricity generation (MW) per hour and consumption of natural gas by hour. Surrebuttal Testimony of Gregory Lander, p. 4, lines 7-10.

As the Company notes in its post-hearing brief, witness Lander’s surrebuttal testimony at page 2, lines 5 through 19 and page 3, line 12 through page 4, line 13 was not “offered in reply” as required by South Carolina case law. Expounding upon issues in surrebuttal testimony that is not in the nature of a reply is improper. Surrebuttal testimony is not an opportunity to offer further explanation of items discussed in a parties’ own direct testimony and, when not in the nature of reply, should be stricken.

Furthermore, the Commission is concerned by the recent trend of parties inappropriately raising discovery issues—first the first time—in pre-filed testimony rather than resolving them through the discovery process. For example, in his surrebuttal testimony, on page 3, lines 12 through 23, witness Lander asserts that the Company’s data did not distinguish between hourly burn/gas flows by type of generator/generating station. Lander states that he was unable to “fully analyze the sufficiency of delivery capacity to power the combined cycle generators” at those locations having both combined cycle generators and combustion turbine generators.

It was improper for SACE/CCL to attempt to address this matter, which is fundamentally a discovery issue, in pre-filed testimony. As the Commission recently concluded in another utility’s fuel proceeding,

Various discovery devices are available to enable a party to gather information to prepare and present evidence in our proceedings. **If there were a discovery dispute, the proper mechanism to require a party to provide properly discoverable information is a motion to compel.** No party moved to compel discovery in this proceeding.

Order No. 2018-708 at 3, Docket No. 2018-2-E (Oct. 30, 2018) (emphasis added). The record does not reflect that SACE/CCL made any attempt to resolve this dispute through the discovery process,

and no motion to compel has been filed. If the proponent of discovery takes issue with a party's responses or objections to the questions asked, it is incumbent upon the proponent to raise that issue by way of a motion to compel under Rule 37(a), SCRCF. Discovery disputes should be handled through the discovery process, not through pre-filed testimony or raised for the first time during an evidentiary hearing. For these reasons, the Commission finds and concludes that DEP's motion to strike should be granted.

Additionally, we agree with the Company that the focus of these fuel proceedings is statutorily required to be on the fuel costs incurred by the Company, not potential future pipeline additions or other issues not directly relevant to the review required by S.C. Code Ann. § 58-27-865. For that reason, we remind the parties that their activities—both in discovery and in testimony—should be restricted to those matters addressed within S.C. Code Ann. § 58-27-865. Placing undue focus on other matters is not in the interest of judicial efficiency and does not best serve customers.

#### **B. SACE/CCL's Motion to Strike**

At the hearing, SACE/CCL moved to strike page 7, lines 12 through 15 from Company witness McClay's rebuttal testimony. As an initial matter, SACE/CCL's motion to strike was filed out-of-time. S.C. Code Ann. Regs. 103-829(A) requires that motions be reduced to writing and filed with the Chief Clerk at least ten (10) days prior to the commencement of a hearing, which in this case would have been May 29, 2020. While this timeframe was impossible as related to the Company's motion to strike applicable to SACE/CCL's surrebuttal testimony, which was filed only a week before the hearing, the Company's rebuttal testimony was filed two full weeks before the hearing in this proceeding, on May 26, 2020. Therefore, SACE/CCL had an adequate

opportunity to file its motion to strike as required by the Commission’s regulations, and it failed to do so and only raised the issue once DEP raised its own timely motion to strike.

Even if SACE/CCL’s motion had been timely filed, it nevertheless fails on substance. The testimony with which SACE/CCL takes issue reads as follows:

First, [the Company’s firm transmission capacity] allows the Companies to procure lower cost natural gas supply from Transco Zones 3 and 4 and transport it to Transco Zone 5 for delivery to the Carolinas’ generation fleet. Transco Zones 3 and 4 intersect with multiple pipelines and have excellent supply liquidity and lower gas prices compared to Zone 5.

This portion of Company witness McClay’s testimony explains how the Company obtains fuel at lowest cost for its customers. This excerpt addresses how the Company obtains firm gas transmission capacity and arranges for its delivery to its generation fleet. Besides this issue being eminently relevant to the central subject matter of this proceeding, the issue is addressed in witness Lander’s discussion of whether and how “the Companies have made prudent use of ratepayer dollars in procuring such capacity.” Lander Direct Testimony at 6. Such prudent use of ratepayer dollars is not limited to capacity utilization, but also how the Company obtains lowest-cost fuel. On that basis, SACE/CCL’s motion to strike is denied.

Because SACE/CCL’s motion to strike was (1) filed out-of-time; (2) relates to rebuttal testimony which SACE/CCL had an opportunity to respond to through its own pre-filed surrebuttal testimony; and (3) the subject rebuttal testimony addressed issues discussed in SACE/CCL’s direct testimony, the Commission finds and concludes that SACE/CCL’s motion to strike should be denied.

## **V. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Discovery Issues**

In Docket No. 2019-3-E, the Commission required DEC to “record its natural gas utilization on an hourly and daily basis on a prospective basis,” and to make the information available for production in its next fuel case. Order No. 2019-691 at 19, Docket No. 2019-3-E (Sept. 30, 2019). Although not ordered to do so by the Commission, DEP began to investigate and pursue the steps necessary to obtain and record this information for production in this fuel case and did produce this information when requested by SACE/CCL. In this case, SACE/CCL has now expanded its request to the Commission to require the Company to specially prepare and provide a report to SACE/CCL that includes (1) each of the Company’s generating units, (2) each unit’s hourly electricity generation, (3) the type of each unit, (4) the type of fuel consumed by each unit, and (5) the quantity of fuel consumed by each unit on an hourly basis.

The evidence of record reflects that the Company has, in good faith, complied with the Commission’s order from the 2019 DEC fuel case by recording and making available for production its natural gas utilization on an hourly and daily basis. Inherent to the process of discovery is the fact that one party has in its “possession, custody or control” information that another party seeks. S.C.R.C.P. 34(a). In order for a party to be required to turn over documents in response to a request for production, the documents must actually be in the possession, custody or control of the party upon whom the request is served. *Reiland v. Southland Equip. Serv.*, 330 S.C. 617, 636 (Ct. App. 1998). To the extent SACE/CCL have requested that the Company produce a specially prepared report that the Company does not currently have in its possession, custody, or control, the request goes well beyond the scope of permissible discovery.

The record also reflects that witness Lander’s hourly analysis of the Company’s gas procurement and utilization has no bearing on the Company’s relationship with its pipeline and

gas capacity, given that Transco places daily limits on the Company's gas utilization rather than hourly limits. Moreover, this hourly analysis has no relation to the costs of natural gas included in the Company's actual or projected expenses considered in this proceeding. The evidence of record also shows that the Company's firm capacity allows DEC and DEP to mitigate penalties associated with pipeline imbalances, and customers receive the benefit through lower cost gas supply, intraday adjustments at minimal cost, and mitigation of punitive pipeline imbalance penalties. The Commission therefore finds and concludes that SACE/CCL's request for a specially prepared report to be produced in discovery is not appropriate or necessary to the resolution of the issues in this or future fuel proceedings.

The Commission also takes this opportunity to remind the parties that this fuel rates proceeding is not the appropriate forum for litigating or making preliminary conclusions regarding additional pipeline infrastructure. Witness Lander proposes that the Company be required to provide "for each generation unit the hourly generation (MWH), the unit type (combined cycle or peaking/combustion turbine), and the type and quantify of fuel consumed by hour." Such a report has no bearing on the Company's fuel costs at issue in this base fuel cost proceeding.

Lastly, with respect to discovery, there was some confusion at the hearing on the part of SACE/CCL as to whether its request for fuel consumption data was intended to apply only to the Company or to both DEP and DEC. Because no motion to compel has been filed, it is not necessary for the Commission to address this issue on the merits. However, the Commission would remind the parties that in the discovery process, the burden is on the proponent of discovery to be precise in their questions, and the respondent is obligated to provide adequate responses or otherwise object to the request. If the proponent of discovery takes issue with a party's responses or



objections to the questions asked, it is incumbent upon the proponent to raise that issue by way of a motion to compel under Rule 37(a), SCRCp. Discovery disputes should be handled through the discovery process, not through pre-filed testimony or raised for the first time during an evidentiary hearing.

**B. SACE/CCL's Proposed Modification to the Procedural Schedule**

SACE/CCL have requested, in pre-filed testimony, that the Commission adjust the procedural schedule in its fuel cases to provide for more time between when the Company files its direct testimony and when intervenors file their direct testimony in order to provide more time for discovery.

The Commission finds and concludes that SACE/CCL's request to modify the procedural schedule in future fuel proceedings is unnecessary. As a threshold matter, the Commission would note that intervenors are free to object to or request modification of the procedural schedules set by the Clerk's office in any future fuel proceedings. Additionally, although witness Lander suggests that SACE/CCL did not have sufficient time to conduct discovery, the record shows that SACE/CCL actually propounded its first set of discovery requests to the Company in this case more than five (5) weeks before SACE/CCL's testimony was due to be filed, the Company provided its responses to those requests well in advance of the May 18 deadline for intervenors to file direct testimony. Additionally, the Company must have sufficient time to prepare its testimony and exhibits following the end of the Review Period prior to its testimony deadline, and the procedural timeline cannot be pushed back due to the rate implementation date in the billing period. Accordingly, the Commission denies SACE/CCL's request for modification of the procedural schedule applicable to future fuel proceedings.

As reflected in the evidence of record, no party challenged the reasonableness or prudence of DEP's fuel purchasing practices and policies, plant operations, and fuel inventory management during the Review Period. Based upon the evidence and testimony of the witnesses, the Commission therefore finds and concludes that DEP's fuel purchasing practices and policies, plant operations, and fuel inventory management during the Review Period are consistent with the statutory requirements of S.C. Code Ann. § 58-27-865 (2015), and are just, reasonable, and prudent.

The Commission finds that the methodology for determining the environmental cost component of the fuel factor and the methodology for allocation and recovery of the capacity-related cost component of the fuel factor (which includes purchased power capacity costs under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and natural gas transportation storage costs) used by DEP in this proceeding are consistent with the statutory requirements of S.C. Code Ann. § 58-27-865, and are just, reasonable, and prudent.

As reflected in the evidence of record, no party challenged the reasonableness or prudence of DEP's proposed fuel factor (including the components recovering fuel costs, variable environmental costs, capacity-related costs, and DERP costs). Based upon the evidence and testimony of the witnesses, the Commission therefore finds and concludes that DEP's proposed fuel factor is consistent with the requirements of S.C. Code Ann. § 58-27-865, and is just, reasonable, and prudent.

The Commission finds that the 2020 component values for the NEM Distributed Energy Resource, as shown in Table 5 of Company witness Martin's direct testimony, comply with the

NEM methodology approved by the Commission in Order No. 2015-194 and satisfy the requirements of S.C. Code Ann. § 58-40-10 *et seq.*

The Commission finds that the revisions to the 2020 Renewable Net Metering Rider RNM tariff sheet, as filed with Company witness Martin's direct testimony, are lawful, just, and reasonable.

The DERP charges as indicated in Company witness Harrington's testimony are reasonable and comply with S.C. Code Ann. §§ 58-27-865, 58-39-140, and 58-39-150.

**IT IS THEREFORE ORDERED THAT:**

1. The Company's motion to strike page 2, line 5 through line 19 and page 3, line 12 through page 4, line 13 of SACE/CCL witness Lander's surrebuttal testimony is granted.
2. SACE/CCL's motion to strike page 7, lines 12 through 15 of Company witness McClay's rebuttal testimony is denied.
3. SACE/CCL's request to adjust the procedural schedule in future fuel proceedings is denied.
4. SACE/CCL's request that the Company prepare a special report to be produced in discovery is not within the permissible scope of discovery, as governed by Rule 34, SCRCP, or necessary for the resolution of the issues in this and future fuel proceedings, and is therefore denied.
5. The Commission notes that the focus of these proceedings is that described by S.C. Code Ann. § 58-27-865, and the activities—both in discovery and in testimony—of parties engaged in fuel cases before this Commission should be focused on those matters addressed within the parameters set by the General Assembly in such statute.

6. For purposes of the next fuel proceeding, DEP shall continue to record its natural gas utilization on an hourly and daily basis on a prospective basis, consistent with Commission Order No. 2019-691, applicable to DEC.

7. The pre-filed testimony of ORS witnesses Anthony Briseno, Brandon Bickley, Anthony Sandonato, and Robert Lawyer and the pre-filed testimony of DEP witnesses Kevin Houston, John Verderame, James McClay, Julie Turner, Kelvin Henderson, Jason Martin, and Dana Harrington, along with their respective exhibits entered into evidence as Hearing Exhibits 1 through 13 are accepted into the record in the above-captioned case without objection. Lastly, the oral testimony of the above witnesses presented at the hearing on June 9, 2020, is also incorporated into the record of this case.

8. The pre-filed testimony of SACE/CCL witness Gregory Lander along with its respective exhibits are accepted into the record in the above-captioned case, with the exception of (1) page 2, line 5 through line 19 and (2) page 3, line 12 through page 4, line 13, which shall be stricken from the record.

9. The fuel purchasing practices, plant operations, and fuel inventory management of DEP related to the historical fuel costs and revenues for the period ending February 29, 2020, are prudent.

10. The methodologies used by the Company to calculate its avoided energy and capacity costs under PURPA for the review and billing periods are reasonable and prudent.

11. The methodologies used by the Company for determining the environmental cost component and the capacity-related cost component of the fuel factor are reasonable and prudent for the review period and the billing period.

12. The Company's revisions to the 2020 Renewable Net Metering Rider RNM tariff sheet, attached hereto as Order Exhibit 1, are lawful, just and reasonable, and shall become effective for service rendered from July 1, 2020 through June 30, 2021.

13. The Company's calculation and method of accounting for the avoided and incremental costs for NEM during the Review Period were reasonable and prudent, and were consistent with the methodology approved in Commission Order No. 2015-194, and complied with S.C. Code Ann. § 58-40-10, *et seq.*

14. The 2020 component values for NEM Distributed Energy Resource comply with the NEM methodology approved by the Commission in Order No. 2015-194 and satisfy the requirements of S.C. Code Ann. § 58-48-10, *et seq.*

15. DEP shall set its base fuel factor (not including the applicable environmental cost component, capacity-related cost component, and DERP avoided cost component) at 1.911 cents per kWh for the Residential class, and 1.896 cents per kWh for General Service (non-demand and demand) and Lighting classes for service rendered July 1, 2020 through June 30, 2021.<sup>10</sup>

16. DEP shall set its environmental cost component billing factor at 0.021 cents per kWh for the Residential class, 0.012 cents per kWh for the General Service (non-demand) class, and 6 cents per kW for the General Service (demand) class, for service rendered July 1, 2020 through June 30, 2021.

17. DEP shall set its capacity-related cost component at 0.535 cents per kWh for the Residential class, 0.360 cents per kWh for the General Service (non-demand) class, 0 cents per

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<sup>10</sup> The base fuel factors, environmental component billing factor, avoided capacity component, and DERP charge include gross receipt tax and regulatory fees.

kWh for the Lighting class, and 109 cents per kW for the General Service (demand) class for service rendered July 1, 2020 through June 30, 2021.

18. DEP shall set its DERP avoided cost component at 0.002 cents per kWh for the Residential class, 0.001 cents per kWh for the General Service (non-demand) class, 2 cents per kW for the General Service (demand) class, and 0.000 cents per kWh for the Lighting class for service rendered July 1, 2020 through June 30, 2021.

19. DEP shall set its DERP Charge at \$1.00 per month for the Residential class, \$3.69 per month for the Commercial class, and \$100.00 per month for the Industrial class, including gross receipts tax.

20. DEP shall file the South Carolina Retail Adjustment for Fuel, Variable Environmental, and Avoided Capacity Costs Rider and all other retail Tariffs with the Commission and a copy with ORS within ten (10) days of receipt of this Order.

21. DEP shall comply with the notice requirements set forth in S.C. Code Ann. § 58-27-865.

22. DEP shall continue to file the monthly reports as previously required.

23. DEP shall continue to examine and make adjustments as necessary to its natural gas hedging program in light of the potentially reduced volatility in the domestic natural gas market. DEP shall also provide monthly natural gas hedging reports to ORS.

24. DEP shall, by rate class, account monthly to the Commission and ORS for the differences between the recovery of fuel costs through base rates and the actual fuel costs experienced by booking the difference to unbilled revenues with a corresponding deferred debit or credit.

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25. DEP shall submit monthly reports to the Commission and ORS of fuel costs and scheduled and unscheduled outages of generating units with a capacity of 100 megawatts or greater.

26. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

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Comer H. “Randy” Randall, Chairman

ATTEST:

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Jocelyn Boyd, Chief Clerk/Administrator